

**Remark/Arguments:**

Applicant respectfully submits the following remarks in response to the Office Action.

**I. Claim Rejections - 35 § U.S.C. 103(a)**

**A. Applicant respectfully traverses the rejection of Claim 1 under 35 U.S.C. § 103(a).**

Applicant respectfully traverses the rejection of Claim 1 under 35 U.S.C. § 103(a) as being unpatentable over *Sines, et al.* (U.S. patent 6,165,069A) ("*Sines*" or "'069" in view of *Cywar* (U.S. patent 4,014,549A) ("*Cywar*" or "'549") on the following grounds:

- (1) *Sines* does not disclose or contain the element of the Claim 1 of the present invention, as amended, wherein the ranks of the two cards initially dealt to a player define two or more possible ranges in relation to those cards;
- (2) *Sines* does not allow a player to select a range defined by the first two cards dealt to the player, allocate a wager thereto and issue an award to the player if the rank of the third card revealed is in the range selected by the player;
- (3) *Cywar* does not display two or more possible ranges defined by the first two cards dealt to the player as disclosed in the amended claims; and
- (4) there is no suggestion, motivation or teaching in either *Sines* or *Cywar* to combine these two references, let alone to combine them in a game unrelated to blackjack.

In rejecting Claim 1 of the present invention as obvious over *Sines* in view of *Cywar*, these two blackjack patents are taken out of context and unwarranted breadth is given to their disclosures.

1. ***Sines* does not disclose or contain the element of the Claim 1 of the present invention, as amended, wherein the ranks of the two cards initially dealt to a player define two or more possible ranges in relation to those cards.**

As the examiner correctly notes, the first step in the factual inquiry into obviousness is to determine the scope and content of the prior art. The applicant respectfully submits, however, that the scope and content of *Sines* does not encompass the amended claim element of two face-up cards dealt to a player defining two or more possible ranges in relation to said face-up cards.

*Sines* involves playing blackjack with virtual playing cards. In *Sines*, each player and the dealer are initially dealt two cards. (Col. 18, Lines 29 to 64; Fig. 13). The players' cards are dealt face-up and the dealer is dealt one card face-up and one face-down. (*Id.*) At this point in *Sines*, a suggested play strategy is provided to the player (Col. 18, Lines 57 to 58).

The suggested play strategy is based upon the combined value of the players' initial two cards, the proximity of that combined value to 21, and the single, face-up card of the dealer, as well as the face-up cards of any other players. Claim 1 of the present application is purposely amended to state that the player's two initial cards "define" two or more ranges. As explained in more detail below, the player's initial two cards in *Sines* do not define two or more possible ranges.

Claim 1 has also been amended to clarify the method steps by replacing "dealing" with "displaying" and other clarifying word changes.

2. ***Sines* does not allow a player to select a range defined by the first two cards dealt to the player, allocate a wager thereto and issue an award to the player if the rank of the third card revealed is in the range selected by the player.**

In *Sines*, after the initial two cards are dealt to the player(s) and the dealer, each player makes a decision. Based on the player's two face-up cards, the one face-up card of the dealer

and, if applicable, the cards of other players, the player decides whether to take another card or stand. (The player may also decide to double-down or split, which are far afield of the present invention). If the player decides to take another card (hit) he or she is not "selecting a card in a range such that his or her hand will be greater than the dealer's without going over 21." (Office Action at 3). For one thing, the player does not know the total of the dealer's hand, so the player cannot be selecting a range of card ranks that will make the total of his or her hand greater than the dealer's without going over 21. The player is merely taking another card to improve his or her hand in the hope that it will not make the total of his or her hand exceed 21. Moreover, the player is not provided an award if the third card is in this "range." Rather, the player is provided an opportunity to take another card, and another, so long as the total of his or her hand does not exceed 21, until the player decides to stop. Thereafter, the dealer plays out its hand, drawing additional cards so long as the total of its hand does not exceed 16. Once the dealer is done drawing, the player's and dealer's hands are compared and an award is issued to the player if the dealer has exceeded 21 or if the player's hand total exceeds the dealer's without going over 21.

This is very different from the present invention. In the present invention, the player's initial two cards define the ranges from which the player may select. The player selects a range and is dealt a third card. If that card is in the range selected, the player is issued an award.

An example may be clarifying. Say the player is dealt a five and a seven (for a total of 12) and the dealer's up card is a four. The player draws a third card, hoping it is in the range of nine or less. But, if it is, the player is not provided an award. If the player draws a six, for a total of 18 and the dealer has a six in the hole (for a total of 10) and draws a 10, or has a 10 in the hole (for a total of 14) and draws a six, the dealer has 20 to the player's 18 and the player loses. If, instead of a six, the player draws a two, the total of the player's hand is 14 and he or she may

choose to draw again even though the card drawn was in the range of nine or less. From this example, it can be seen that in *Sines* the player is not selecting a range and being provided an award if the third card dealt to the player is in the selected range.

**3. *Cywar* '549 does not display two or more possible ranges defined by the first two cards dealt to the player, as disclosed in the amended claims.**

The examiner states that "'549, however, displays two or more possible ranges in relation to the first two cards (Figs. 1 to 13, player can draw (hit) or stand depending on the value of the player's two first cards). It would be obvious to one of ordinary skill in the art to apply the displayed ranges of '549 to the game of '069." (Office Action at 3). But, Figures 1 to 13 of '549 do not show "two or more possible ranges in relation to the first two cards." Figures 1 to 13 of '549 show the potential ranks of the first two cards in a column on the left, and play strategies based upon those two cards and the dealer's card that is showing. No ranges defined by the first two cards are displayed.

As discussed in the previous section, the first two cards merely provide one variable input to the play strategy. Moreover, even if the play strategy displayed in '549 is considered a displayed "range," the player is not provided an award if he selects a third card that falls in the selected "range." As shown on the face of '549 (Figure 2), if the player is dealt a 2+2, the player should split, in which case he or she is dealt two more cards to make two new hands that are then played against the dealer. If the player is dealt 2+3, 2+4, 2+5, or 2+6, the player is advised to draw an additional card and then reevaluate based on the dealer's face-up card. A 2+7, 2+8 or 2+9 should be doubled-down or hit, based on the dealer's face-up card. A 2+10 has three options, as always based on the dealer's card. A player with a 2+A is advised to see the next card and then reevaluate based on the dealer's card.

By contrast, the present invention's displayed ranges are just that, ranges of card values displayed to the player and from which the player may select, where the player receives an award if the third card dealt and displayed to the player is in the selected range. This aspect of the present invention is not disclosed or made obvious by either the '069 or the '549 patent.

**4. There is no suggestion, motivation or teaching in either *Sines* or *Cywar* to combine these two references, let alone to combine them in a game unrelated to blackjack.**

Applicant respectfully disagrees with the examiner's assertion that '069 suggests combining the training device of the '549 strategy card with the '069 blackjack game because "one of the motivations for '069 is to lower the 'intimidation' factor felt by many novice players in [the] casino, which lowers game play at the tables." (Office Action at 4). The '069 patent addresses the intimidation factor itself, by presenting the player with a Basic Strategy suggestion, such as a display of the word "HIT." ('069 Column 18, lines 22 to 60).

'549, on the other hand, provides a complicated decision matrix on its blackjack playing cards that the player must decipher. (See '549, Figs. 1-13). A person skilled in the art that wanted to lower the intimidation factor in order to increase the volume and speed of the table game play would not substitute the complicated decision matrix of '549 for the simple one word command of '069, or even include the '549 matrix. Thus, there is no motivation to combine these references.

In any event, even if combined, as discussed in Section A.3. above, the two references do not, alone or in combination, disclose displaying two face-up playing cards, "the ranks of said face-up playing card defining two or more possible ranges," the player "selecting a range," "allocating said wager to said allocated range; and revealing a third card and if the rank of said

third card is in the range selected by the player issuing an award to the player," as amended Claim 1 does.

**B. Claim 7 is not obvious.**

Claim 7, which depends from amended Claim 1 and adds the element of playing multiple games from a single deck is not obvious for the same reasons stated above that amended Claim 1 is not obvious.

**C. Amended Claim 2 is not unpatentable over '069 and '549 in view of *Weingart* ("*Weingart*" or "'369").**

Initially, for the reasons stated above, amended Claim 1 is not obvious in view of '069 and '549. Therefore, amended Claim 2, which depends from amended Claim 1, is also not obvious.

In addition, the additional elements of including a display of placeholders for each of the ranks of the 13 cards, as disclosed in amended Claim 2, is not suggested by *Weingart*, '069 or '549. There is no teaching, suggestion or motivation to combine the bingo squares of *Weingart* with the two blackjack games of '069 and '549. Applicant respectfully disagrees with the examiner that "[t]he placeholders of '369 would be advantageous, as they would allow the player to see which cards have already been drawn and which remain in the deck." (Office Action at 5). Cobbling on the 52 placeholders of '369 and the complicated strategy cards of '549 to the '069 electronic blackjack patent would create a mish mash of a game only Dr. Frankenstein could enjoy or understand. Moreover, including a display of cards that had already been drawn, for player perusal and consideration, is taught against by the '069 suggestion that play should be made simpler and faster. ('069, Column 5, lines 46 to 64). Adding another factor for the player to contemplate before deciding to hit or stand would slow play, not speed it up as '069 teaches. The cardtracking function of applying '369 to '549 and '069 is also taught against by '069, which

seeks to minimize the risk of card tracking by the player because it creates a play advantage. ('069 Column 4, lines 32 to 59).

**D. Claim 3 is not rendered obvious by '069, '549 and '369.**

For the same reasons stated above with respect to Claim 2, Claim 3, wherein the placeholders for each of the ranks of the 13 cards are etched areas that the cards appear to fit into, is not rendered obvious by '069, '549 and '369.

**E. Claims 13, 4, 14 to 16, 21 to 23, 26, 27 and 29 to 31 are not obvious over the combination of '069, '549 and '369 in view of *Scarne*.**

**1. Claim 13**

Claim 13 has been amended to state that the initial two cards dealt to the player define the two or more ranges. Therefore, for the reasons set forth above in Section I.A. with respect to amended Claim 1, the applicant respectfully submits that '069 in combination with '549 does not disclose or suggest two cards dealt to a player that define two or more ranges from which the player can select and be awarded a win if a third card dealt to said player is in the selected range, as claimed in amended Claim 13.

In addition, *Scarne* does not disclose a pay table that is based upon the number of cards in each of two or more ranges, or its equivalent. *Scarne* discloses the rules and a suggested strategy for playing blackjack. If one takes a broad reading, *Scarne* also discloses a pay table where a blackjack pays the player 3 to 2. But, *Scarne* does not disclose "a pay table that is based upon the number of cards in each of the two or more ranges" as amended Claim 13 does. (See Amended Claim 13(d)). The pay table in Claim 13 is dynamic, it changes based upon the number of cards in the two or more ranges defined by the first two cards. The *Scarne's* pay table, however, is static. A blackjack pays 3 to 2 and a non-blackjack win or loss is even money.

Therefore, *Scarne*, in combination with '069, '549 and '369 does not render Amended Claim 13 obvious or unpatentable.

**2. Claim 4**

As to Claim 4, the applicant respectfully submits that the combination of '069, '549 and '369 and *Scarne* does not pay the player based upon the wager, whether the range selected by the player is in the range in which the third card falls, and a pay table." The 3 to 2 pay disclosed in *Scarne* is for blackjack – "a natural 21 (a count of 21, with two cards)." (*Scarne* at 282 (emphasis added)). Therefore, the payout disclosed in *Scarne* and reflected in its pay table is not based on "whether the range selected by the player is in the range in which the third card falls." (Office Action at 8). There is no third card with a blackjack.

**3. Claims 14-16**

Claims 14-16 are not obvious or unpatentable for the reasons discussed above in that they depend from patentable and non-obvious amended Claim 13.

**4. Claim 21**

Claim 21 is not obvious for the same reasons set forth above in Section I.B. with respect to Claim 7.

**5. Claim 22**

Claim 22, as amended, discloses a gaming apparatus where two cards are dealt to a player, a display of two or more possible ranges defined by said first and second cards is provided, a means for selecting among the displayed ranges is provided, as is a means for dealing a third card and providing a payout when said third card is in the selected range. For the reasons discussed above in Section I.A. with respect to amended method Claim 1, this apparatus is not



rendered obvious or unpatentable by the blackjack game of '069, alone, or in combination with '549.

**6. Claim 23**

As to Claim 23, as discussed above in Section I.E.1. with respect to Claim 13, *Scarne* does not disclose a pay table that is based upon the number of cards in each of said two or more possible ranges. Therefore, Claim 23 is non-obvious and patentable.

**7. Claim 26**

Claim 26 is not obvious for the same reasons set forth in Section I.C. with respect to amended Claim 2.

**8. Claim 27**

Claim 27 is not obvious for the same reasons set forth in Section I.D. with respect to amended Claim 3.

**9. Claim 29**

Claim 29 is not obvious because it depends from non-obvious Claim 22.

**10. Claim 30**

Claim 30 is not obvious for the same reasons set forth in Section I.A. with respect to amended Claim 1.

**11. Claim 31**

Claim 31 is not obvious for the same reasons set forth in Section I.A. with respect to amended Claim 1.

**P. Claim 36**

New Claim 36 is added to cover the present invention wherein indicia other than playing cards are utilized. This claim is supported by the existing specification which describes a preferred embodiment that utilizes playing card indicia, but is not limited to that embodiment. (See page 9 of the application).

**II. Response to Claim Rejections – 35 U.S.C. § 112**

Claim 35 has been amended to depend from Claim 31

**III. Allowable Subject Matter**

Applicant appreciates examiner's conclusion that claims 5, 6, 8 to 12, 17 to 20, 24, 25, 28 and 32 to 35 would be allowable but for their dependency on a rejected base claim. Applicant believes it has overcome examiner's objections to the base claims, however, and therefore these Claims should be allowed. In addition, Claims 5 and 17 have been rewritten in independent form. Further, Claims 6 and 19 have been amended to change "one or more of the middle cards of the range selected" to "one or more of the ranks of cards in the range selected" for the sake of clarity and because previously there was no antecedent basis for "the middle cards." Claim 25 through 28 are amended to change their dependency to the apparatus of claim 22 or 23 instead of the method.

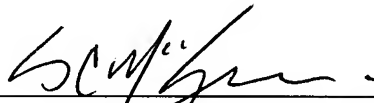
**IV. Citation of Pertinent Prior Art**

Applicant has reviewed U.S. patent 5,100,326A to Leep, et al., U.S. Patent 5,628,511A to Jacoby, U.S. patent 6,131,906A to Green, U.S. patent 5,033,744A to Bridgeman, et al., U.S. pre-grant publication 2003/0020235 A1, application 09/916,899 to Brenner, U.S. patent 1,996,151 A to Gordon, U.S. patent 3,536,328 A to Finerty, U.S. patent 3,863,362 A to Borianne, U.S. patent

4,927,149 A to Bull and U.S. patent 4,146,233 A to Musolino. None of these cited references disclose the unique, inventive and non-obvious aspects of the present invention.

The applicant believes that all claims are now in condition for allowance and respectfully requests reconsideration.

Respectfully submitted,



---

Stephen C. McKenna, #44233

Gibson, Dunn & Crutcher LLP  
1801 California Street, Suite 4200  
Denver, Colorado 80202-2641  
(303) 298-5963